Supreme Court, U.S.
F I L E D
SEP 23 1999
CLERK

No. 98-1993

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

THE STATE OF FLORIDA,

Petitioner,

-vs-

J.L., a juvenile,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The Petitioner, J.L., a juvenile, by and through undersigned counsel, moves this Court for leave to proceed *in forma pauperis* in the above-styled cause, pursuant to Rule 39 of this Court. Petitioner has been adjudicated indigent and permitted to proceed *in forma pauperis* by the courts of the State of Florida. Petitioner's affidavit of indigency in support of this motion is attached.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1963

BY: _____
HARVEY J. SEPLER
Assistant Public Defender
Counsel of Record for Respondent
Florida Bar No. 473431

10 pp

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, JOHNNY LAGUERRE, am the petitioner in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes ___ No X
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received.
   DEC 1997 300 PER MO. (AVERAGE)

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes ___ No X

   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or have a checking or savings account? Yes ___ No X

   a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes X No ___

   a. If the answer is yes, describe the property and state its approximate value.
   1908 1989 HONDA ACCORD 500-

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: 9/22, 1999

(Signature)

Supreme Court, U.S.
FILED
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ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

BENNETT H. BRUMMER
Public Defender

HARVEY J. SEPLER
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QUESTION PRESENTED

Whether an anonymous tip providing only innocent details and lacking any of the recognized reliability indices can, *in and of itself*, provide police with a reasonable belief that the Respondent was engaged in criminality and that he was armed and dangerous?

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STATEMENT OF THE CASE

The Respondent accepts the characterization of the procedural and factual context of this case contained in the majority decision of the Supreme Court of Florida.

It should also be noted that the issue before all of the state courts below concerned the legal sufficiency of the anonymous tip, rather than the identity of the juveniles mentioned in the tip.

REASONS FOR DENYING THE PETITION

By its decision, the Supreme Court of Florida adhered to this Court's unbroken precedent that an anonymous tip which lacks any degree of inherent reliability will not support a warrantless stop and frisk. This is particularly true, the court held, 1) the tip contained only innocent details, 2) the police elected not to attempt further investigation and 3) the state failed to show that the Respondent's conduct placed anyone at risk.

The Petitioner urges that the mere mention of a weapon elevates an otherwise-insufficient anonymous tip to grounds for reasonably believing the suspect is armed, dangerous and engaged in criminality. It further argues that the corroboration of innocent details, coupled with the "statistical likelihood that the gun was illegal" and the inherent threat to safety, made the officers' actions necessary.[1] See Pet. at 15.

It is important to note, at the outset, that the stop and frisk in this case were predicated *solely* on the anonymous tip. That is, other than verifying that these were the same people as were mentioned in the tip, police made no independent investigation and they never observed any suspicious circumstances to bolster the information contained in the tip.

As for the tip, it contained only innocent details. The anonymous caller told

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[1] There was no mention of the "statistical likelihood" or the inherent risks arguments at trial or in prior appellate proceedings and, as such, no evidentiary support for them appears in the record.

police that three black boys were standing by a specific bus stop near a pawn shop and that one of the boys (the one wearing a plaid-looking shirt) had a gun. The police couldn't recall whether the tipster was an adult or juvenile, male or female. They never asked whether the tipster bore any special relationship to the three boys and how the tipster knew about the gun. The record does not reveal whether the tip and subsequent stop occurred on a weekday or weekend, during or after business hours, and whether or not other people were in the area.

The tip contained no predictive features that might convey that the caller possessed knowledge about the boys not available to a mere passerby on the street.

Six minutes after receiving the tip, police arrived at the named location. They saw boys matching the anonymous caller's descriptions and, without asking any questions or seeing anything suspicious about the boys' presence or conduct, stopped them and frisked for weapons.[2] Interestingly, as noted by the state supreme court, police searched all three boys -- even though the tip concerned only the boy wearing the plaid-looking shirt. See Pet. at A-2.

After carefully applying this Court's decisions on stops and searches, the Supreme Court of Florida held that the tip lacked sufficient reliability to justify "active intervention into an otherwise peaceful situation and did not warrant a frisk

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[2] Thus, the only information provided by the tip and corroborated by police concerned the identity of the boys (a matter that was never at issue in the suppression hearing).

until some observable suspicious conduct took place." See Pet. at A-9.

That is, while police may rely on "presently occurring innocent detail [anonymous] tips" to call attention to a possible crime, they may not use them as the sole basis for effecting the stop and frisk. See Pet. at A-6. There must be something more than the tip to justify a reasonable belief that the suspect is engaged in criminality and is armed and dangerous.

For example, the supreme court reasoned, police must conduct some type of independent investigation to verify non-innocent details or they must observe suspicious circumstances that arouse their safety concerns. The police in this case limited their investigation to corroborating innocent details and they admitted to the absence of suspicious conduct or circumstances. In fact, the court held, "there was nothing [in this situation] to prevent the police from engaging in a consensual encounter with the trio or from questioning them concerning their possession of a weapon as reported in the anonymous tip." See Pet. at A-9.

Finally, the court reasoned, there was nothing in this record to warrant the recognition of a firearms exception to the Fourth Amendment. See Pet. at A-11. Despite the Petitioner's argument that the concerned officers had no alternative than to effect an on-the-spot stop and frisk, support for this is noticeably absent from the record.

The state supreme court's arguments are entirely consistent with established

law. In Terry v. Ohio,[3] for example, this Court upheld a stop and weapons search where police reasonably suspected that Terry had committed, was in the process of committing or was about to commit a crime. Moreover, the Court held, where the officer reasonably believed the suspect was armed and dangerous, he was authorized to conduct a frisk of the suspect's outer clothing.

The reasonableness of the officer's suspicions and beliefs are measured according to a "totality of the circumstances" test,[4] and while anonymous tips have, on occasion, provided a sufficient basis to engender a reasonable suspicion or belief, the tip must have inherent reliability.

In Alabama v. White,[5] this Court explained that the two main factors used to test the reliability of an anonymous tip are 1) the tipster's relationship either to the suspect or the alleged crime and 2) the nature of the information contained in the tip.[6]

> Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors -- quantity and quality -- are considered in the "totality of the circumstances -- the whole picture.
>
> . . .
>
> [I]f the tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.

496 U.S. at 330.

In this case, the anonymous tip referred only to innocent, presently occurring details (sex, race, number, location and clothing -- information available to anyone passing the boys on the street).[7] Moreover, the tipster gave no suggestion of bearing a special relationship with the boys that would allow intimate knowledge of the presence of a gun. As a result of its diminished reliability, the tip could hardly justify a reasonable suspicion of criminality or a reasonable belief that anyone was in danger.[8]

The Petitioner urges that although much of the supreme court's opinion is consistent with established law, the law should bend when the anonymous tip alleges the presence of a firearm. Citing to a number of federal and state cases involving firearm-possession tips (only some of which are anonymous), the

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3 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

4 See, e.g., Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); United States v. Cortez, 449 U.S. 41, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).

5 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

6 See also Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

7 See also United States v. Kent, 691 F.2d 1376 (11th Cir. 1982), cert. denied, 462 U.S. 1119, 103 S.Ct. 3086, 77 L.Ed.2d 1348 (1983); United States v. McLeroy, 584 F.2d 746 (5th Cir. 1978).

8 Such inherently low reliability is accentuated by the absence of predictive qualities to the tip. See, e.g., Alabama v. White, 496 U.S. at 332, 110 S.Ct. at 2417.

Petitioner argues that the instant decision is in conflict with the emerging trend in the law.

In fact, many of these cases cited do not conflict with this decision. Nearly all of them involve a *combination* of factors, rather than solely the contents of anonymous tip, to support the suspicion of criminality and the public safety concern.

There, the officers' concerns were aroused not only by the tips, but by suspicious behavior or made furtive movements,[9] knowledge of the suspect's prior dangerous or threatening behavior,[10] or corroboration of predictive features of the tips -- all of which gave the tips an additional measure of credibility.[11]

Contrary to the Petitioner's understanding, and over and above the isolated cases to the contrary, the trend in the law is *not* to find that an anonymous firearms-possession tip, containing only innocent presently occurring details, is alone sufficient to satisfy the reasonableness test for police stops and frisks. Even if this Court were inclined to create new exceptions to the Fourth Amendment, this case is not the best candidate for doing so.

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9 See, e.g., United States v. Bold, 19 F.3d 99 (2d Cir. 1993), cert. denied, 517 U.S. 1250, 116 S.Ct. 2511, 135 L.Ed.2d 200 (1996); United States v. DeBerry, 76 F.3d 884 (7th Cir. 1996).

10 See, e.g., State v. Hasenbank, 425 A.2d 1330 (Me. 1981); see also United States v. Gibson, 64 F.3d 617 (11th Cir. 1995), cert. denied, 517 U.S. 1173, 116 S.Ct. 1580, 134 L.Ed.2d 678 (1996) (police knew there were as many as forty people inside the establishment where the gun was reported to be).

11 See, e.g., United States v. Walker, 7 F.3d 26 (2d Cir. 1993), cert. denied , 510 U.S. 1169, 114 S.Ct. 1201, 127 L.Ed.2d 549 (1994); United States v. Kent, 691 F.2d 1376 (11th Cir. 1982), cert. denied, 462 U.S. 1119, 103 S.Ct. 3086, 77 L.Ed.2d 1348 (1983).

CONCLUSION

For these reasons, the Respondent respectfully prays that this Court deny the Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Respondent's Brief In Opposition has been served on counsel for Petitioner by United Parcel Service addressed to the Office of the Attorney General, 110 Tower, 110 S.E. 6th Street, 10th Floor, Ft. Lauderdale, Florida 33301, this 17th day of September, 1999.

HARVEY J. SEPLER
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